

**Filed 2/3/09 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2009 ND 3

State of North Dakota,

Plaintiff and Appellee

v.

Jason Dale Huffling,

Defendant and Appellant

No. 20080151

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable Bruce B. Haskell, Judge.

AFFIRMED.

Per Curiam.

Tyrone J. Turner (argued), Assistant State's Attorney, Courthouse, 514 E. Thayer Avenue, Bismarck, ND 58501, for plaintiff and appellee.

Benjamin C. Pulkrabek (argued), 402 1st St. NW, Mandan, ND 58554-3118, for defendant and appellant.

State v. Huffling
No. 20080151

Per Curiam.

[¶1] Jason Huffling appeals from a district court order revoking probation and from a second amended criminal judgment.

[¶2] Huffling pled guilty to two class C felonies, conspiracy to commit burglary and conspiracy to commit theft of property. The district court placed Huffling on probation. A petition for revocation of probation was filed, and the district court held a revocation hearing. Huffling asserts at the revocation hearing, the district court judge advised him, “if he appeared before him again, at a future revocation hearing, he would have a minimum five-year Department of Corrections Sentence.” A second petition for revocation of probation was filed. The district court entered an order revoking Huffling’s probation and entered a second amended criminal judgment sentencing Huffling to five years on each charge, with the sentences to run consecutively.

[¶3] Huffling appeals, arguing the district court judge limited the sentence he could impose on Huffling to five years, based on the district court judge’s statement at the first revocation hearing. This Court has held: “A trial judge is allowed the widest range of discretion in fixing a criminal sentence; this court has no power to review the discretion of the sentencing court in fixing a term of imprisonment within the range authorized by statute.” State v. Steinbach, 1998 ND 18, ¶ 24, 575 N.W.2d 193 (citation omitted). The maximum penalty for a class C felony is five years’ imprisonment, a fine of five thousand dollars, or both. N.D.C.C. § 12.1-32-01(4). A district court has the authority to determine whether a felony sentence runs concurrent with or consecutive to another felony sentence. State v. Patten, 353 N.W.2d 26, 30 (N.D. 1984) (citing State v. Rudolph, 260 N.W.2d 13, 16 (N.D. 1977)); see N.D.C.C. § 12.1-32-11(1). The sentence imposed by the trial court is within the range authorized by statute; therefore, we summarily affirm under N.D.R.App.P. 35.1(a)(7).

[¶4] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Mary Muehlen Maring
Daniel J. Crothers
Dale V. Sandstrom

